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Paper No. 7

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In re Application of
Pawlak, et al.
Application No. 09/306,474
Filed: May 6, 1999
Attorney Docket No. METRIKA-013
For: Blocking Compositions for
Immunoassays

LETTER
AND
NOTICE OF ABANDONMENT

A petition under 37 CFR 1.47(a) was received in the United States Patent and Trademark Office (Office) on December 2, 1999 (certificate of mailing dated Monday, November 29, 1999).

A review of the file reveals that on May 28, 1999, the Office mailed a Notice to File Missing Parts of Application to petitioner, which set forth a two (2) month shortened statutory period to submit the required payment of a \$380.00 filing fee, a properly signed oath or declaration in compliance with 37 CFR 1.63, and a \$65.00 surcharge for their late filing.

On December 2, 1999 (certificate of mailing November 29, 1999), petitioner filed a declaration, a \$380.00 filing fee, a \$65.00 surcharge, a request for a four (4) month extension of time, a petition under 37 CFR 1.47(a), and a declaration of facts of Timothy H. Gens, attorney of record. However, petitioner failed to pay the requisite petition fee of \$130.00 as set forth in 37 CFR 1.17(i).

The rules and statutory provisions governing the operations of the Office require payment of a fee upon filing a petition under 37 CFR 1.47(a). In this instance, the fee required is \$130.00. See 37 CFR 1.17(i). The petition in the above-identified application was not accompanied by payment of the required fee. Therefore, no consideration on the merits can be given to the present petition until the required fee is received by the Office.

Although petitioner filed a petition under 37 CFR 1.47(a) on December 2, 1999 (certificate of mailing November 29, 1999), petitioner was not relieved of the requirement to submit a timely and proper reply to the Notice to File Missing Parts of Application of May 28, 1999. Section 1.135(b) of the Code of Federal Regulations states, in relevant part: "Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application

may require." Because petitioner failed to submit a timely and proper reply to the Notice on or before Monday, November 29, 1999, within the meaning of 37 CFR 1.135(b), this application is properly held abandoned as of November 29, 1999.¹

Under the circumstances of this application, petitioner must file a petition to revive under 37 CFR 1.137 and pay the proper petition fees within **ONE (1) month** of this decision before the petition under 37 CFR 1.47 may be addressed on its merits. No extensions of time are permissible. Unless petitioner can demonstrate that petitioner was "unavoidably" prevented from submitting a proper reply to the Notice, a petition under 37 CFR 1.137(b) is suggested. The petition under 37 CFR 1.47 will remain in the file until such time as petitioner has filed a grantable petition to revive under 37 CFR 1.137.

Petitioner is reminded that a grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Further correspondence with respect to this matter should be addressed as follows and to the attention of Petitions Attorney Christina T. Tartera:

By mail: Commissioner for Patents
 Box DAC
 Washington, DC 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Office of Petitions
 2201 South Clark Place
 Crystal Plaza 4, Suite 3C23
 Arlington, VA

¹ If the period to reply ends on a Saturday, Sunday or federal holiday, the reply is timely if it is filed on the next succeeding business day. MPEP 710.01(a). When a timely reply is not filed, the application is regarded as abandoned after midnight of the date the period for reply expired. *Id.* The fact that the period to reply ends on a Saturday, Sunday or federal holiday does not change the abandonment date. *Id.*

Telephone inquiries should be directed to Petitions Attorney Christina T. Tartera at (703) 306-5589.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy